THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.11462 of 2006

20.7.2006

Between:

Pantham Bapi Raju, S/o.late Surya Rao
And others

… Petitioners

AND

The District Collector, West Godavari District, Eluru
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.11462 of 2006

ORDER:

The petitioners are residents of Dasripassu Village of Pendapadu Mandal in West Godavari District. They claim that they are either owners or tenants of small extents of agricultural wetlands in survey Nos.268/1, 270/8, 310/1, 310/2, 310/3, 310/5, 310/6, 311/E, 311/1 and 321/2 of the said village. They allege that the lands of the petitioners and another extent of Acs.2.00 in the area is under the Ayacut of Government irrigation source and their lands are supplied water through a channel in survey No.269 locally called "Ari Cheruvu Puntha Bodi", which statedly is also the source to fill up the tanks in the vicinity. Adjacent to the said Bodi, it appears, there is "Ari Cheruvu Puntha Road" in survey No.269, which is being used by the farmers on either side of Puntha/Bode for ingress and egress since long time. They also allege that they on their own expense strengthen 8' width road by putting a gravel layer.

It is the case of the petitioners that on a representation made by one Trimutrhulu for allotment of house sites in the year 2005, Deputy Mandal Surveyor issued a notice on 16.5.2005 for conducting survey. The petitioners made representation to the respondents objecting grant of house site pattas *inter alia* on the ground that the Gram Panchayat passed resolution not to grant house site pattas. In spite of the same, the petitioners came to know through a Newspaper report that house site pattas are granted to the poor people in survey No.269 of the village as illegal, arbitrary and violative of Board Standing Orders (BSO) 15(3)(4)(ii).

At the stage of admission itself, the respondents filed counter affidavit. Therefore, the matter was heard at length and is being disposed of at the admission stage.

The Mandal Revenue Officer, Pentapadu Mandal (MRO), the second respondent herein, opposed the writ petition by filing a counter affidavit to the following effect. The land admeasuring Acs.0.81 in survey No.269/2 of Darsiparru Village is classified as "Bodi

Poramboke" in the revenue records and the same is Government land. On 02.5.2006, Smt.Undi Venkata Lakshmi and others gave a representation to the MRO for grant of house site pattas in "Bodi Poramboke" in R.S.No.269/2. The Mandal Revenue Inspector enquired into the same and submitted a report on 25.5.2006 and recommended grant of pattas. The Mandal Surveyor also measured the land and subdivided the land admeasuring Acs.0.81 into forty one (41) plots leaving the balance extent of Acs.2.00 in survey No.269 for the use of ryots for taking paddy from their fields. Accordingly, the MRO issued house site pattas to 41 beneficiaries vide proceedings dated 03.6.2006 subject to approval of conversion proposals. It is further stated that the cost of the private land is between Rs.10 to 12 lakhs per acre and no person owning land came forward to give their land for housing purpose and, therefore, pattas were given in survey No.269/2, which does not cause any inconvenience to anybody. The allegation that pattas were granted in "Puntha Poramboke" denying ingress and egress is denied. An allegation is made that the petitioners encroached upon the Government "Bodi Poramboke" land and cultivated the same along with paddy fields and that is the reason why they are opposing to grant house site pattas to the poor people in the village. Though the land belongs to Irrigation Department, as it does not object, the pattas were granted and distributed on 04.6.2006. The allegation that the land vests in the Panchayat is denied by making reference to Section 58 of A.P. Panchayat Raj Act, 1994.

The petitioners filed reply affidavit. The following details have been brought out in the reply affidavit. The width of Puntha Road is 8 feet and the width of the channel margin is 9 feet whereas the width of the channel is 6 feet. The total width of Puntha Road including road margins is 27 feet and, therefore, if pattas are granted on either side of the Puntha Road, the same would cause inconvenience to the farmers. The Mandal Surveyor has not issued any notice to the farmers under the Ayacut and, therefore, the petitioners assert that the MRO has not conducted any survey. The respondents did not follow the procedure contemplated under BSO 15 and if the pattas are granted on either side of Puntha Road, petitioners should be deprived of their livelihood, as they will not get water to the fields and will not be able to take the crop out of the fields by using the Puntha Road.

Learned Counsel for the petitioners submits that when admittedly the land is classified as "Puntha Poramboke" and "Bode

Poramboke", without proper proceedings from the District Collector converting the same as house site pattas, grant of pattas is illegal especially when Gram Panchayat passed resolution objecting grant of such house sites. Secondly, he would urge that the Mandal Surveyor did not conduct any survey and alternately even if such survey is conducted the same is not proper, as no notice was given to the petitioners. Lastly, he would submit that "Bodi" forms part of the water body and, therefore, grant of house site pattas in relation to water body has been deprecated by the Courts. He placed strong reliance on the decisions reported in **Katuri Mahalaxmamma v Special Commissioner of Land Revenue**[1] and **Dokku Raju Babu v State of A.P. and others**[2]. **Per contra**, learned Assistant Government Pleader for Revenue (General) submits that the land in survey No.269 is Government land and that the land admeasuring Acs.0.81 in survey No.269/2 is classified as "Bodi Poramboke" leaving balance extent of Acs.2.00 as "Puntha Poramboke". According to the learned Assistant Government Pleader, "Bodi" is only the bank of the channel and, therefore, there is no prohibition under BSO 15 to assign the land for house site pattas. The question that falls for consideration is whether the grant of house site pattas in the land classified as "Bodi Poramboke" (Government land) is prohibited under law.

There is no dispute that BSO have force of law. Reliance is placed by the learned Counsel for the petitioners on BSO 15 (3) and (4), which reads as under.

> **15(3) Persons eligible for assignment**:- Only landless and poor persons who directly engage themselves in cultivation, including Harijans, Ex-Toddy Tappers, backward communities and weavers shall be eligible for assignment. Ex-Servicemen, Serving Soldiers (Jawans), Political Sufferers and Co-operative Societies consisting of entirely landless poor persons shall also be eligible for assignment according to the special procedure prescribed in paragraph 11.
>
> **(4) Lands that may be assigned and that may not be assigned**:-
>
> (i) All lands at the disposal of Government except those hereinafter prohibited may be assigned. The assignment of lands shall generally be free of market value except in the case of project affected lands in which case market value

shall be collected.

(ii) The assignment of the following classes of lands is prohibited:-

(a) Poramboke (tank-beds, fore-shore of tank-beds, cattle stands, grazing lands and reserved lands (reserved for depressed class members or for any public purpose, such as schools, play grounds, hospitals, maternity centres, reading rooms, extension of house sites, Panchayat purpose town sites and lands in the proximity thereof;

(b) Land which has been unoccupied for 18 months and adjoins a reserved forest or an unreserved block of a square mile or more until the Collector has consulted the District Forest Officer and considered any objections he may have to its assignment;

(c) Lands containing topes or valuable trees;

(d) Lands within cantonment limits;

(e) Lands reserved under Section 26 of the Forest Act;

(f) Lands within Port Limits;

(g) Lands near the sea coast within one furlong of high water mark of the sea;

(h) Water-course porambokes, namely, margins of channels, streams, etc,

(i) Lands in the vicinity of aerodromes or landing grounds (i.e.,) within a belt of 200 yards;

(j) Lands containing minerals, quarries, etc.,

(k) Padugais, i.e., land within the flood-bank of rivers, lanka lands not held on ryotwari tenure river accretions and reformed lands for which the former owners have ceased to pay assessment;

(l) Lands where “Pati Matti” is available and;

(m) Any other lands which are required or likely to be required for any public or any special purposes necessary for the provision of amenities to the community or connected with

the development of the village;

Provided, however, that tank-bed lands, fore-shore lands under categories (g), (j), (k) and (m) above, if not immediately required or if their occupation be not objectionable at present, may be leased with a condition for resumption, when required for any public purpose without payment of compensation for improvements, if any affected.

Para 35 of BSO 15 reads as under.

"(35) *Grant of poramboke and reserved land*

(1)(i) *General* :- The grant of any land registered as poramboke or entered in the accounts as "reserved" or of any land falling under the heads enumerated in the following sub-paragraph is *prima facie* objectionable. Applications for such land shall not be entertained by Village Officers or Revenue Inspectors but may be received by Tahsildars. They must be in writing and need not be stamped. If the assignment of the land is forbidden under the ensuing rules or is contrary to the provisions of the rules in Section II or is in his opinion undesirable, the Tahsildar should reject the application; if he thinks that the land may be granted, he should publish the proposal to assign it for occupation in the village in the manner prescribed, and when a Panchayat has been established for the village under the Andhra Pradesh Gram Panchayats Act, 1964 (Act 2 of 1964), he should also give intimation of the proposal to such Panchayat Board and should then obtain the orders of the Collector to transfer it to the head of "assessed" land. If the Collector refuses to sanction the transfer, the Tahsildar should reject the application and inform the applicant accordingly. The Collector, if he sanctions the transfer, should fix the assessment to be charged, which will ordinarily be the assessment on similar land in the neighbourhood, but he can exercise his direction in the matter. The Tahsildar should then deal with the application in the manner prescribed for "assessed" land.

(ii) *Water-course porambokes:*- Great care should be taken to preserve the margins of canals and streams. The transfer and assignment of such porambokes should be restricted to lands lying outside the limits prescribed in paragraph 2 of B.S.O. No.15"

There cannot be any doubt that if the land is classified as tank-bed, fore-shore of tank-bed or water-course porambokes, the same cannot be assigned. However, if the land was not used as such for a long time, the District Collector may consider for assignment of such

land after following due procedure of law. The Division Bench of this Court, to which I was a member, in **Katuri Mahalaxmamma** (supra), considered this aspect of the matter and laid down as under.

> It is not difficult to comprehend as to why poramboke lands had been reserved and were brought within the prohibited category so that the same may not be assigned. The only exception as may be noticed from Note 1 appended to Board Standing Order No.15(4) was, when the lands are really not required for the purpose for which they were originally set apart and only upon arriving at a satisfaction that they are not so required, steps should be taken to convert them to ayan and assign them. As noticed hereinabove, the Tahsildar as the assigning authority is competent to assign only wet land and dry land of an extent of only two and a half acre and thus he had absolutely no jurisdiction to assign poramboke land far less kunta poramboke before the same is converted. Poramboke and kunta poramboke even upon conversion could be subject-matter of assignment only at the instance of the Collector and not anybody else. The area of land is also more than two and a half acre.

Yet again it was observed in para-19 as under.

> Porakbokes are primarily tank beds. Such tank beds are required to be maintained in villages for various purposes including for maintenance of a clean environment. Kunta poramboke is a water tank. Such water bodies are required to be maintained having regard to the doctrine of public trust which envisages that the lands and water bodies which vest in the sovereign State should be preserved and utilized for the utmost benefit of public at large. All such water bodies vest in public authority. In the show-cause notice it has been clearly stated that the lands in question were used as a fresh water tank for the use of surrounding colony people. We, therefore, are of the opinion that although, ordinarily, proceedings for cancellation of assignment should be initiated within a reasonable time, in case of this nature where Article 21 of the Constitution of India would have a role to play, the writ Court in large public interest should not interfere in the matter.

In **Dokku Raju Babu** (supra), I considered the question whether drainage canal (in Irrigation System) can be treated as water-course and assignment of such land can be prohibited. Considering BSO 15, this Court laid down as under.

> The term water-course having regard to the context in

which it is used in Board Standing Orders requires broader interpretation. Water-course includes all the lands through which or on which water flows. In the Law Lexicon by Sri P.Ramanatha Aiyar (1997 Edition page No.19760, the following definitions of water-course are given.

> WATERCOURSE. A stream of water usually flowing in a defined channel, and discharging itself into some other stream or other body of water.
>
> A watercourse does not begin by prescription or yet by assent, but begins *ex jure naturae*, having taken its course, naturally, and cannot be diverted. "Watercourse" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any such channel.
>
> *"Watercourse" includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water.*
>
> "Watercourse" means any channel which is supplied with water from a canal and which is maintained at the cost of the irrigators, and includes all subsidiary works connected with such channel except the sluice or outlet through which water is supplied to such channel.

Therefore, there cannot be any dispute or quarrel with a proposition that a water-body, tank-bed land or irrigation channel or poramboke land, the assignment of which is prohibited, cannot be assigned either for agricultural or housing purpose. The question, however, remains is whether "Bodi Poramboke" can be assigned as house sites. "Bodi/Bode" is a telugu colloquial equivalent of minor irrigation channel or field channel mainly used in the Districts of Krishna, Guntur, East Godavari and West Godavari. In Telugu-English Dictionary[3], the same is defined as "a small bank in a field or garden" and in another Telugu-English Dictionary[4], it is defined as "the name of the *places* in a *river* or *creek*, dug out of the bank, where country vessels are fastened and get repaired, in the manner of a *dock"*. Therefore, the channel as such in which the water flows by gravitation to the fields through field channel is "Bodi". But the bank of irrigation channel, which also forms part of pathway (Puntha) cannot form part of irrigation channel. The respondents were aware of this difference. Presumably for this purpose after receiving the representation of the so-called landless/homeless persons of the village, an enquiry was

conducted, survey was completed after giving notice to the petitioners and then only the Collector sanctioned grant of house site pattas. The procedure, therefore, was in accordance with the relevant assignment rules. The same does not in any manner violate the BSO or the principle of non-assignment of water course.

The submission of the learned Counsel for the petitioners that the survey was not conducted is belied by the record produced by the learned Assistant Government Pleader, which would show that as directed by the MRO, the Mandal Surveyor issued a notice and conducted survey recommending the assignment of only Acs.0.81 towards house site pattas. Further, the map (explanatory sketch) filed by the MRO along with the counter affidavit would show that the irrigation channel/Bodi flows from west to east in the area and the lands of the petitioners 1, 2 and 5 are situated on the northern side whereas the lands of the petitioners 3 and 4 are situated on the southern side. The map also shows that the house site pattas are granted not exactly on the immediate bank of the irrigation channel but a little distance away. This Court, therefore, can draw an inference that the irrigation prospects of the petitioners have not been in any manner curtailed nor the allegation that the irrigation channel itself is assigned can be accepted.

An allegation is made in paragraph 7 of the counter affidavit filed by the MRO to the effect that the petitioners encroached a portion of Government Bodi Poramboke and cultivated paddy along with their lands and that is the reason why they are objecting grant of house site pattas. In the reply affidavit, this is denied and, therefore, this Court cannot record any definite finding on this aspect. It is always open to the authorities to conduct spot inspection and take necessary action against any person who has encroached upon the Government land. The submission that the petitioners and other farmers are deprived of access to the irrigation channel (Ari Cheruvu Puntha Bodi) by reason of assignment of land on the Puntha cannot be accepted. Admittedly, only an extent of Acs.0.81 in survey No.269/2 has been assigned leaving balance of Acs.2.00 for pathway.

The writ petition for the above reasons is misconceived and is accordingly dismissed. No costs.

_____

(**V.V.S.RAO, J**)

July 20, 2006.
YS

---

[1] 2002 Suppl.(1) ALD 273 (DB)

[2] 2006(4) ALD 192

[3] Revised and enlarged Edition Authored by P.Sankaranarayana and published in 2004 by Asian Educational Services, New Delhi.

[4] Nineth Edition Authored by William Brown and published in 2002 by Asian Educational Services, New Delhi.